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Claimant ROBERTO VARGAS  
HERNANDEZ

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ARTURO SANTOS GARCIA,

Plaintiff,

v.

ROBERTO VARGAS HERNANDEZ,

Defendant.

ROBERTO VARGAS HERNANDEZ,

Counter-Claimant,

v.

ARTURO SANTOS GARCIA, an  
individual, LILIANA P. JARDON, an  
individual, and DOES 1 through 50,  
inclusive

Counter-Defendants.

Case No. 8:23-cv-00946-CJC-JDE

The Hon. Magistrate Judge Hon.  
Autumn D. Spaeth

**DEFENDANT/COUNTER-  
CLAIMANT ROBERTO VARGAS  
HERNANDEZ'S FIRST AMENDED  
COUNTERCLAIM FOR:**

- 1) Conversion
- 2) Trespass to Chattel/Personal  
Property
- 3) Negligence
- 4) Defamation and/or Libel
- 5) Defamation Per Se and/or Libel  
Per Se

Trial Date: TBD

Defendant/Counter-Claimant ROBERTO VARGAS HERNANDEZ hereby  
alleges his compulsory and/or permissive Counterclaim as follows:

**PRELIMINARY ALLEGATIONS**

1  
2  
3 1. At all times mentioned herein, Counter-Claimant ROBERTO  
4 VARGAS HERNANDEZ (“HERNANDEZ”) has been a well-respected member of  
5 the Orange County community and a prominent businessman.  
6

7 2. As an immigrant living his American Dream, HERNANDEZ cares  
8 deeply about helping other immigrants obtain their own American Dream.  
9 Accordingly, he took in Plaintiff and Counter-Defendant Arturo Santos Garcia  
10 (“GARCIA”), and welcomed him into his family. In return, GARCIA damaged  
11 HERNANDEZ’S property, stole from him, and defamed HERNANDEZ.  
12 HERNANDEZ now seeks remedies provided by common law.  
13

**PARTIES**

14  
15  
16 3. Defendant and Counter-Claimant HERNANDEZ is informed and  
17 believes and thereon alleges that Plaintiff and Counter-Defendant GARCIA is a  
18 citizen of Mexico, who illegally emigrated to the United States fraudulently using  
19 the birth certificate and California driver’s license to gain entry by representing  
20 himself as a citizen. GARCIA is currently residing in Moreno Valley, California.  
21

22 4. Defendant and Counter-Claimant HERNANDEZ is informed and  
23 believes and thereon alleges that Counter-Defendant LILIANA P. JARDON  
24 (“JARDON”) was a waitress at a seafood restaurant in the general Lake Elsinore  
25 and Moreno Valley area, currently a waitress at a Mexican restaurant in the same  
26 region, and GARCIA’s romantic partner. JARDON is currently residing in Moreno  
27 Valley, California.  
28

5. Defendant and Counter-Claimant HERNANDEZ is a local business owner who operates a chicken restaurant in Anaheim, California and a ranch in Lake Elsinore, California. HERNANDEZ raises a variety of farm animals on his ranch. HERNANDEZ is a resident of Fullerton, California.

6. HERNANDEZ is without information and knowledge at this time concerning the true names and capacities of the Counter-Defendants named herein as Does 1 through 50, inclusive. Therefore, HERNANDEZ sues these Counter-Defendants by such fictitious names. Counter-Claimant will seek to amend this Counterclaim to allege such Counter-Defendants' true names and capacities when such have been ascertained. HERNANDEZ is informed and believes, and based thereon alleges, that each fictitiously named defendant was and is in some manner legally responsible for the events, breaches, injuries and damages alleged in this Counterclaim.

7. HERNANDEZ is informed and believes, and based thereon alleges, that at all times relevant to this action each of the Doe Counter-Defendants and each named Counter-Defendant was an agent, subcontractor, supplier, contractor, consultant, employee, joint venturer, partner, affiliated entity and/or independent contractor implicated by the allegations in Plaintiff's Complaint or of any other party asserting claims against Counter-Claimant.

### **JURISDICTION AND VENUE**

8. The court has supplemental jurisdiction over this counterclaim under 28 U.S.C. §1367, subdivision (a) and Federal Rule of Civil Procedure, Rule 13 because it arises out of the same transactions and occurrences alleged in Plaintiff's complaint, and the counterclaims are so related to Plaintiff's original federal

1 jurisdiction claims that they form a part of the same case or controversy.

2  
3 9. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because,  
4 upon information and belief, Plaintiff and Counter-Defendant resides in this district,  
5 and because a substantial portion of the events or omissions giving rise to this action  
6 occurred in this district.

7  
8 **GENERAL ALLEGATIONS**

9  
10 10. HERNANDEZ is a local small businessowner who has operated a  
11 restaurant specializing in charbroiled chicken since 1983.

12  
13 11. HERNANDEZ opened his restaurant with the American Dream in  
14 mind and with a dream to serve his local community with a family restaurant that  
15 served authentic, delicious, and affordable Mexican food.

16  
17 12. HERNANDEZ still goes to his restaurant regularly and greets local  
18 patrons, including local families, professional wrestlers, and several well-known  
19 celebrities.

20  
21 13. HERNANDEZ has served his local community and remained in  
22 business for over 40 years. Thus, HERNANDEZ is a staple and prominent member  
23 of the Orange County community. Indeed, HERNANDEZ and his restaurant  
24 business regularly receive honors and recognition by local municipalities for their  
25 service to the community.

26  
27 14. HERNANDEZ'S restaurant is well-known in the general Southern  
28 California area. The restaurant hosts autograph signing events with professional

1 wrestlers, athletes and celebrities. These events attract individuals from across  
2 Southern California to HERNANDEZ'S restaurant. Individuals who attend these  
3 events often post about the event and about HERNANDEZ'S restaurant location on  
4 social media; thus, creating free marketing opportunities for HERNANDEZ and his  
5 restaurant.

6  
7 15. HERNANDEZ also owns and operates a ranch in Lake Elsinore,  
8 California, where he raises several farm animals, including chickens, goats, and  
9 horses.

10  
11 16. HERNANDEZ is informed and believes and thereon alleges that  
12 GARCIA is a friend of HERNANDEZ'S long-time and trusted family friend in  
13 Mexico.

14  
15 17. HERNANDEZ is informed and believes and thereon alleges that in  
16 approximately 2019, GARCIA successfully crossed the border into the United  
17 States through the port of entry located between San Diego, California, and Tijuana,  
18 Baja California, Mexico. HERNANDEZ is also informed and believes and thereon  
19 alleges that GARCIA crossed the border between Mexico and the United States by  
20 fraudulently presenting himself as an American citizen and by using another  
21 individual's United States birth certificate and California driver's license to gain  
22 entry into the country.

23  
24 18. Upon GARCIA'S arrival in the United States, GARCIA made contact  
25 with HERNANDEZ and was allowed to live on HERNANDEZ'S ranch. As an  
26 immigrant himself, HERNANDEZ empathized with GARCIA. Additionally, since  
27 GARCIA was a friend of HERNANDEZ'S long-time and trusted family friend in  
28 Mexico, he took GARCIA in, gave him a place to live, and treated GARCIA like an

1 extended member of the family.

2  
3 19. From approximately 2019 to 2022, GARCIA lived on  
4 HERNANDEZ'S ranch in Lake Elsinore, California. HERNANDEZ provided  
5 GARCIA with a two-bedroom trailer home in which to live. This trailer was  
6 equipped with a bathroom and kitchen. Upon information and belief, GARCIA  
7 lived in this trailer from approximately 2019 to at least 2020, but he thereafter  
8 continued to have access to the trailer and continued to cause damage to this trailer  
9 until he left the ranch.

10  
11 20. In 2020, GARCIA moved into a one-bedroom trailer located in a  
12 different area of the ranch and remained in this trailer for the remainder of his time  
13 on the ranch.

14  
15 21. GARCIA left his first trailer in complete disarray. He did not clean the  
16 trailer and did not dispose of his garbage. GARCIA damaged the shower faucet and  
17 clogged the trailer plumbing. He did not report this damage, and thus, did not even  
18 give HERNANDEZ a chance to timely fix any of the damage GARCIA caused.  
19 GARCIA also left food on plates, and left mud all over the trailer without cleaning  
20 it. Overall, he failed to maintain the trailer in a clean and sanitary condition. As a  
21 result, HERNANDEZ had to incur the costs to have the trailer cleaned and sanitized  
22 after GARCIA moved out of the ranch. Indeed, HERNANDEZ did not become  
23 aware of these damages until GARCIA left the ranch because GARCIA did not  
24 report any damage and HERNANDEZ did not enter the trailers GARCIA lived in  
25 out of respect for his privacy, and because HERNANDEZ, who is an amputee, is  
26 physically incapable of climbing the stairs required to enter the trailer.  
27 Unfortunately, the trailer remains broken and damaged due to GARCIA'S  
28 occupancy.

1           22. Throughout his entire time on the ranch, GARCIA used, occupied, and  
2 had access to a larger kitchen and living room area located in a building next to his  
3 original trailer. HERNANDEZ also provided GARCIA golf carts and a Polaris  
4 RZR to transport himself around the ranch and make local trips off the ranch  
5 property. GARCIA frequently used these vehicles while living on the ranch.

6  
7           23. While staying with HERNANDEZ, GARCIA damaged two golf carts  
8 beyond repair. As a result, HERNANDEZ incurred the costs to replace the golf  
9 carts.

10  
11           24. Upon information and belief, GARCIA damaged these golf carts, in  
12 part, because he would drive them up and down the hill on the ranch at a reckless  
13 speed.

14  
15           25. Like the golf carts, GARCIA also damaged the Polaris RZR beyond  
16 repair in 2022.

17  
18           26. Moreover, HERNANDEZ provided GARCIA with three cell phones,  
19 with cell phone accounts under GARCIA'S name, while GARCIA lived on  
20 HERNANDEZ'S ranch. GARCIA damaged all them during his tenure on the ranch.  
21 Upon information and belief, GARCIA damaged the third cell phone HERNANDEZ  
22 provided to him in June 2022.

23  
24           27. In 2022, GARCIA allowed his romantic partner, JARDON, and  
25 JARDON'S son to move into the trailer he occupied as his "guests." GARCIA and  
26 his guests cluttered the trailer and surrounding area with toys, gym equipment, and  
27 garbage.

28

1           28. Upon information and belief, JARDON was a waitress at a local  
2 restaurant and met GARCIA through an acquaintance of GARCIA. Because  
3 JARDON worked at a restaurant in the Lake Elsinore/Riverside County area, she  
4 interacted with several members of the community, including current and potential  
5 customers and referral sources for HERNANDEZ'S restaurant and individuals who  
6 attended autograph signings and posted about the signings and about  
7 HERNANDEZ'S restaurant on social media.

8  
9           29. On or about June 25, 2022, GARCIA and his live-in guests, including  
10 JARDON, left the ranch without notice. When they left the ranch, they broke  
11 windows on the building GARCIA occupied and they disconnected the security  
12 cameras put in place to deter non-residents or burglars from entering the property.

13  
14           30. GARCIA and his guests also left the trailer in complete disarray. They  
15 failed to throw away any trash including a large amount of fast-food wrappers,  
16 failed to clean any used pots, pans and plates—leaving food on them, and failed to  
17 dispose of old toys and gym equipment. Additionally, they broke the stairs leading  
18 up to the front door of the trailer and broke a door to the trailer off its hinges. As a  
19 result, HERNANDEZ had to incur the costs to have the trailer cleaned and to  
20 dispose of all the garbage and waste GARCIA and his guests caused.  
21 Unfortunately, the trailer remains broken and damaged due to GARCIA'S  
22 occupancy.

23  
24           31. HERNANDEZ is informed and believes and thereon alleges that before  
25 he left the ranch, GARCIA stole several tools and ranch equipment from  
26 HERNANDEZ. Specifically, GARCIA stole drills, saws, mallets, hammers, tool  
27 box with wrenches, and screwdrivers. GARCIA stole these items in approximately  
28 June 2022.



1           32. After HERNANDEZ took GARCIA in, treated GARCIA like a  
2 member of his family, welcomed him at family events and holidays, bought him  
3 new clothes when he gained approximately 40 pounds, and even bought him  
4 presents. Defendant is informed and believes and thereon alleges that GARCIA left  
5 without notice after trashing HERNANDEZ'S property and stealing items from  
6 HERNANDEZ.

7  
8           33. To add insult to injury, GARCIA made false, inflammatory, and  
9 degrading statements about HERNANDEZ and HERNANDEZ'S business,  
10 including statements to JARDON and other third parties who socialized and  
11 interacted with current and potential customers and referral sources of  
12 HERNANDEZ'S restaurants, and to individuals who attend autograph signings and  
13 who provide free marketing for HERNANDEZ'S restaurant through social media.  
14 GARCIA even went as far as falsely accusing HERNANDEZ of committing several  
15 crimes relating to alleged "human trafficking" and "abuse" of GARCIA. Defendant  
16 is informed and believes and thereon alleges that GARCIA made these claims for  
17 the sole purpose of embarrassing HERNANDEZ and thereafter seeking money from  
18 HERNANDEZ. Upon information and belief, GARCIA'S defamatory statements to  
19 JARDON and others were made on a continuous ongoing basis beginning at least  
20 one year prior to the complaint and continuing on to the present. GARCIA'S  
21 defamatory statements are separate and independent from, and in many instances  
22 predate, the allegations made in GARCIA'S complaint, statements to his counsel, or  
23 statements made in contemplation of this litigation. These statements include the  
24 following:

- 25  
26           a. Statements to JARDON that HERNANDEZ enslaved him on his  
27 ranch;  
28

- b. Text messages to JARDON that HERNANDEZ enslaved him on his ranch;
- c. Emails to JARDON that HERNANDEZ enslaved him on his ranch;
- d. Direct messages to JARDON that HERNANDEZ enslaved him on his ranch;
- e. Statements to JARDON that HERNANDEZ forced him to work on HERNANDEZ'S ranch for 16 hours a day, 7 days a week;
- f. Text messages to JARDON that HERNANDEZ forced him to work on HERNANDEZ'S ranch for 16 hours a day, 7 days a week;
- g. Emails to JARDON that HERNANDEZ forced him to work on HERNANDEZ'S ranch for 16 hours a day, 7 days a week;
- h. Direct messages to JARDON that HERNANDEZ forced him to work on HERNANDEZ'S ranch for 16 hours a day, 7 days a week;
- i. Statements to JARDON that HERNANDEZ is a criminal and engaged in criminal behavior regarding human trafficking and abuse to GARCIA;
- j. Text messages to JARDON that HERNANDEZ is a criminal and

1 engaged in criminal behavior regarding human trafficking and  
2 abuse to GARCIA;

3  
4 k. Emails to JARDON that HERNANDEZ is a criminal and  
5 engaged in criminal behavior regarding human trafficking and  
6 abuse to GARCIA;

7  
8 l. Direct messages to JARDON that HERNANDEZ is a criminal  
9 and engaged in criminal behavior regarding human trafficking  
10 and abuse to GARCIA;

11  
12 m. Statements to JARDON that HERNANDEZ abused and  
13 threatened GARCIA;

14  
15 n. Text messages to JARDON that HERNANDEZ abused and  
16 threatened GARCIA;

17  
18 o. Emails to JARDON that HERNANDEZ abused and threatened  
19 GARCIA;

20  
21 p. Direct messages to JARDON that HERNANDEZ abused and  
22 threatened GARCIA;

23  
24 q. Statements to JARDON that HERNANDEZ only fed GARCIA  
25 one meal a day and denied him additional food;

26  
27 r. Text messages to JARDON that HERNANDEZ only fed  
28 GARCIA one meal a day and denied him additional food;

- 1 s. Emails to JARDON that HERNANDEZ only fed GARCIA one  
2 meal a day and denied him additional food;  
3  
4 t. Direct messages to JARDON that HERNANDEZ only fed  
5 GARCIA one meal a day and denied him additional food;  
6  
7 u. Statements to JARDON that HERNANDEZ socially isolated  
8 GARCIA;  
9  
10 v. Text messages to JARDON that HERNANDEZ socially isolated  
11 GARCIA;  
12  
13 w. Emails to JARDON that HERNANDEZ socially isolated  
14 GARCIA;  
15  
16 x. Direct messages to JARDON that HERNANDEZ socially  
17 isolated GARCIA;  
18  
19 y. Statements to JARDON that HERNANDEZ did not properly pay  
20 GARCIA;  
21  
22 z. Text messages to JARDON that HERNANDEZ did not properly  
23 pay GARCIA;  
24  
25 aa. Emails to JARDON that HERNANDEZ did not properly pay  
26 GARCIA;  
27  
28 bb. Direct messages to JARDON that HERNANDEZ did not

properly pay GARCIA;

cc. Statements to JARDON that HERNANDEZ stole and/or  
confiscated GARCIA'S identification documents;

dd. Text messages to JARDON that HERNANDEZ stole and/or  
confiscated GARCIA'S identification documents;

ee. Emails to JARDON that HERNANDEZ stole and/or confiscated  
GARCIA'S identification documents;

ff. Direct messages to JARDON that HERNANDEZ stole and/or  
confiscated GARCIA'S identification documents.

34. Additionally, upon information and belief, these statements were made  
to JARDON in front of current and potential customers and event attendees of  
HERNANDEZ'S restaurant.

35. Upon information and belief, JARDON subsequently repeated these  
false, inflammatory, and degrading statements to current and potential customers of  
HERNANDEZ'S restaurant during the same time period while knowing them to be  
false.

### **FIRST CAUSE OF ACTION**

#### **(Conversion – Against Counter-Defendant GARCIA)**

36. HERNANDEZ hereby realleges and incorporates herein by reference  
Paragraphs 1 through 35, as though fully set forth herein.

1           37. Upon information and belief GARCIA is currently in possession of  
2 several tools essential for his ranch operations including, but not limited to, drills,  
3 saws, mallets, wrenches, screwdrivers, etc., all of which were previously provided to  
4 GARCIA, but were and continued to be owned by HERNANDEZ.

5  
6           38. HERNANDEZ demanded that GARCIA immediately return to  
7 HERNANDEZ all such tools he took from HERNANDEZ, specifically, the drills,  
8 saws, mallets, a tool box with wrenches, and screwdrivers.

9  
10           39. GARCIA, without justification or privilege, has failed or refused to  
11 return the tools, specifically the drills, and saws, mallets, a tool box with wrenches,  
12 and screwdrivers to HERNANDEZ.

13  
14           40. GARCIA'S conduct is willful, wanton, malicious, and in bad faith.

15  
16           41. As a consequence of the foregoing, HERNANDEZ has suffered and  
17 will continue to suffer irreparable harm and loss, including interference with  
18 HERNANDEZ'S ranch operations including stalling repairs and work due to the  
19 loss of the tools GARCIA took and the discovery that these tools were missing  
20 while others attempted to perform tasks in which the tools are needed.

21  
22           42. HERNANDEZ has been damaged in an amount to be proven at trial as  
23 a result of GARCIA'S actions in converting several expensive tools.

**SECOND CAUSE OF ACTION**

**(Trespass to Chattel/Personal Property – Against Counter-Defendant  
GARCIA)**

43. HERNANDEZ hereby realleges and incorporates herein by reference Paragraphs 1 through 42, as though fully set forth herein.

44. HERNANDEZ owned and had a right to possess the tools, specifically the drills, and saws, mallets, a tool box with wrenches, and screwdrivers.

45. GARCIA intentionally accessed and took tools provided to him by HERNANDEZ for his use for work.

46. Upon information and belief GARCIA took these tools, removed them from the property and has maintained possession of the tools, which are necessary for HERNANDEZ to conduct his ranch operations.

47. HERNANDEZ did not consent to GARCIA taking the tools off his property or for use of the tools outside of GARCIA'S work duties.

48. In committing these acts, GARCIA acted with malice, oppression, or fraud and is therefore subject to punitive damages.

49. As a direct and proximate result of GARCIA'S actions, HERNANDEZ has suffered damages as a result of his inability to access and utilize the tools for a substantial, and ongoing, period of time in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**

**(Negligence – Against Counter-Defendant GARCIA)**

50. HERNANDEZ hereby realleges and incorporates herein by reference Paragraphs 1 through 49, as though fully set forth herein.

51. GARCIA stood in a special relationship with HERNANDEZ, based on the facts alleged in this Counterclaim, including but not limited to the following: GARCIA lived in housing accommodations provided to him by HERNANDEZ. GARCIA had a duty not to damage the accommodations, keep the accommodations in a clean and sanitary condition, and dispose of garbage, keep electric, gas and plumbing in a clean and sanitary condition, and to not permit another or himself to destroy, damage or deface the trailers he occupied, the housing facilities, and equipment.

52. GARCIA owed a reasonable person standard of care to HERNANDEZ when he stayed on HERNANDEZ’S property. As an example, the California Civil Code section 1941.2 imposes duties on tenants, including the duty to (1) keep “the premises which he occupies and uses clean and sanitary;” (2) “[t]o dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner”; (3) “[t]o properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits”; and (4) “not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.” The standard under Civil Code section 1941.2 is reasonable for anyone invited to be guest on one’s property and should be adopted as the reasonable standard here. Accordingly, GARCIA owed the same duty of care to



1 HERNANDEZ as an individual who lived on HERNANDEZ'S ranch.

2  
3 53. By virtue of the relationship described above, GARCIA'S duty of  
4 reasonable care toward HERNANDEZ under the circumstances included but was  
5 not limited to: (1) keeping the trailers and kitchen he occupied in a clean and  
6 sanitary condition; (2) disposing of all rubbish, garbage, and other waste in his  
7 trailer in a clean and sanitary manner, (3) maintaining the electrical appliances, gas  
8 and plumbing fixtures he used and occupied while living on the ranch in a clean and  
9 sanitary condition and (4) refraining from willfully or wantonly destroying, any part  
10 of the trailer, golf carts and other vehicles occupied for his travel around the ranch  
11 facilities, his living facilities and equipment on the ranch.

12  
13 54. GARCIA breached these duties owed to HERNANDEZ by the acts and  
14 omissions alleged in this Counterclaim, including but not limited to damaging the  
15 trailers, security cameras, and vehicles he used and occupied during his time on the  
16 ranch; failing to dispose of rubbish, garbage and waste; and upon information and  
17 belief, allowing other persons, including his guests, to occupy and wantonly cause  
18 damage to HERNANDEZ'S trailer and other facilities used and occupied by  
19 GARCIA during his tenancy.

20  
21 55. As a direct and proximate result of these actions, HERNANDEZ has  
22 sustained damages, including damages for repairs, waste disposal and replacement  
23 of property.

24  
25 56. HERNANDEZ is entitled to damages in an amount to be determined at  
26 trial.

**FOURTH CAUSE OF ACTION**

**(Defamation and/or Libel - Against All Counter-Defendants)**

57. HERNANDEZ hereby realleges and incorporates herein by reference Paragraphs 1 through 56, as though fully set forth herein.

58. HERNANDEZ has at all relevant times enjoyed an outstanding reputation as a member of the local community in Orange County, California, and in Lake Elsinore, California, and as a prominent local businessman.

59. GARCIA made false and derogatory statements alleged above about HERNANDEZ and HERNANDEZ'S restaurant to JARDON and HERNANDEZ'S current or potential customers.

60. JARDON thereafter repeated and published these statements to HERNANDEZ'S current or potential customers knowing them to be false.

61. Defendant and Counter-Claimant is informed and believes and thereon alleges that JARDON and other individuals to whom GARCIA and JARDON published these defamatory statements had actual or potential business relationships with HERNANDEZ.

62. The statements by GARCIA and JARDON were not made in connection with a public issue or an issue of public interest. Rather, the statements were made for a personal financial purpose.

63. GARCIA and JARDON failed to use reasonable care to determine the truth or falsity of these statements, and, in fact, made the statements knowing they

1 were false and with the malicious intent to harm HERNANDEZ and his business.

2  
3 64. As a proximate result of GARCIA and JARDON making these  
4 statements, HERNANDEZ has suffered reputational loss, loss of business, and other  
5 actual damages in an amount to be proven at trial.

6  
7 65. GARCIA and JARDON'S actions were undertaken with fraud, malice  
8 or oppression, or with a conscious disregard of the rights of HERNANDEZ, and,  
9 therefore, HERNANDEZ is entitled to an award of exemplary and punitive damages  
10 against GARCIA and JARDON in a sum that will be established according to proof  
11 at trial sufficient to punish HERNANDEZ and JARDON and deter others from  
12 engaging in similar misconduct.

### 13 FIFTH CAUSE OF ACTION

#### 14 **(Defamation Per Se and/or Libel Per Se - Against All Counter-Defendants)**

15  
16  
17 66. HERNANDEZ hereby realleges and incorporates herein by reference  
18 Paragraphs 1 through 65, as though fully set forth herein.

19  
20 67. The false and derogatory statements, including written statements,  
21 GARCIA and JARDON made, as alleged above about HERNANDEZ and his  
22 business operations were not only false but malicious, reckless, and falsely accuse  
23 HERNANDEZ of engaging in several different crimes. Thus, these statements  
24 constitute defamation per se and give rise to the presumption of defamation.

25  
26 68. As a proximate result of GARCIA and JARDON making these  
27 statements, HERNANDEZ has suffered reputational loss, loss of business, and other  
28 actual damages in an amount to be proven at trial.

69. GARCIA and JARDON'S actions were undertaken with fraud, malice or oppression, or with a conscious disregard of the rights of HERNANDEZ, and, therefore, HERNANDEZ is entitled to an award of exemplary and punitive damages against GARCIA and JARDON in a sum that will be established according to proof at trial sufficient to punish HERNANDEZ and deter others from engaging in similar misconduct.

**PRAYER FOR RELIEF**

WHEREFORE, HERNANDEZ prays for relief as follows:

1. For declaratory relief as described above;
2. For general, compensatory, and special damages according to proof at trial;
3. Exemplary and punitive damages according to proof at trial;
4. For attorneys' fees and costs to the full extent permitted by law;
5. For interest at the maximum rate permitted by law; and
6. For such other and further relief as the Court may deem just and proper.

DATED: August 3, 2023

PAYNE & FEARS LLP  
Attorneys at Law

By: /s/ Alejandro G. Ruiz  
ALEJANDRO G. RUIZ  
JESSICA A. VIDAL

Attorneys for Defendant and Counter-  
Claimant ROBERTO VARGAS  
HERNANDEZ

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